

The Honorable Ronald B. Leighton
Noted for October 22, 2010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JULIANNE PANAGACOS, MALLORY)	
HAGEL, STEPHANIE SNYDER, EMILY COX,)	No. 3:10-cv-5018 RBL
KIM CHAPLIN, MOLLY PORTER, FABIOLA)	
ROMERO, ANDREA ROBBINS, JULIA)	DEFENDANT CLINTON D.
GARFIELD, ERAN RHODES, ELI EVANS,)	COLVIN'S REPLY TO MOTION
CHRIS GRANDE, DAVI RIOS,)	TO DISMISS, PURSUANT TO
)	RULE 12(b)(6), OR IN THE
Plaintiffs,)	ALTERNATIVE, MOTION FOR
)	SUMMARY JUDGMENT
v.)	PURSUANT TO RULE 56
)	
JOHN J. TOWERY, THOMAS R. RUDD;)	
CLINTON D. COLVIN; CITY OF OLYMPIA;)	
TOR BJORNSTAD, ET AL.,)	
)	
Defendants.)	

COMES NOW Defendant Clinton Colvin, by and through his attorney Mark N. Bartlett, respectfully requests that the Court deny Plaintiffs' Motion to Dismiss pursuant to Notice of Unavailability. In addition, Mr. Colvin respectfully requests that the Court deny Plaintiff's request for an extension of 30 days to respond. Mr. Colvin's request to the Court is based on the following:

DEFENDANT CLINTON D. COLVIN'S REPLY TO MOTION TO
DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY
JUDGMENT (3:10-cv-5018 RBL) - 1
DWT 15708830v1 0092030-000001

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1 1. On June 1, 2010, I filed an appearance on behalf of defendant Clinton
2 Colvin in the above-matter.

3 2. During the five months since I have appeared in this matter (June 1 to
4 October 25), Plaintiffs' Attorney Lawrence A. Hildes has filed a series of notices of
5 unavailability. Added together, those notices indicate Mr. Hildes to be unavailable for
6 approximately 50% of this time period (72 out of 147 days). In addition, during much of
7 this period of unavailability, Mr. Hildes submits he does not have access to email.

8 3. A "Notice of Unavailability" is not an official court order that allows one
9 party to dictate the court calendar ex parte. Instead, it is professional courtesy that all
10 federal practitioners in the Western District of Washington attempt to extend to their
11 fellow members of the bar.

12 4. I have always attempted to extend such courtesies to other counsel. That
13 courtesy, however, can only be extended within the parameters of an attorney's ethical
14 duty to his client and, in addition, subject to an unspoken understanding that no attorney
15 would abuse the practice.

16 5. Mr. Hildes's statement that "[t]here was no urgency at that time for
17 Defendant Colvin to file a motion" illustrates his total lack of appreciation of Mr. Colvin's
18 position. Mr. Colvin is attempting to find a new job after his mandatory retirement in June
19 2010. He believes this pending lawsuit is negatively impacting his job search. In addition,
20 Mr. Colvin finds the lawsuit to be a highly stressful situation for not only himself, but for
21 his entire family. The stress is heightened by Mr. Colvin's strong belief that the lawsuit is
22 baseless. From the first conversation I had with Mr. Colvin, he unequivocally,
23

1 emphatically, and repeatedly has instructed me to attempt to get the claims against him
2 dismissed at the earliest possible time.

3 6. Mr. Hildes made a decision to represent the Plaintiffs and file the
4 underlying lawsuit that is currently pending before this court. This lawsuit has been
5 pending since January 13, 2010. Mr. Hildes also made the decision to attend conferences
6 in Detroit, Michigan, and New Orleans, Louisiana, and further decided what other legal
7 matters to involve himself in. Mr. Hildes appears to suggest that there should be special
8 rules carved out to meet the unique needs of his personal and professional calendar,
9 regardless of how his numerous other commitments might impact the court and/or other
10 parties.

11 7. Mr. Colvin has had this lawsuit pending against him for nine months. As
12 countless courts have ruled in analyzing *Bivens* claims, qualified immunity provides
13 government employees immunity from suit, not merely a defense to liability. *Mitchell v.*
14 *Forsyth*, 472 U.S. 511 (1985).

15 Mr. Colvin respectfully request that Plaintiff's motion to dismiss, and in the
16 alternative, to extend time, be denied.

17 DATED this 8th day of October, 2010.

18 Davis Wright Tremaine LLP
19 Attorneys for Defendant Clint Colvin

20 By s/ Mark N. Bartlett

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 8th day of October, 2010.

Davis Wright Tremaine LLP
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